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8 IN THE UNITED STATES DISTRICT COURT
9
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA - SAN JOSE DIVISION

11 GERVACIO AND ROSA MARTINEZ) Case No.: C 05-03904 JW
12 Plaintiffs,)
13 vs.) JOINT UPDATED CASE MANAGEMENT
14) STATEMENT
15 WERNER CO., HOME DEPOT, USA,)
16 INC., and DOES 1-50,) PROPOSED ORDER
17 Defendants.)
18

19 Pursuant to Rule 26(f) of the Federal Rules of Civil Procedure
20 and Local Rules 16-9 and 16-10, the parties, Plaintiffs, Gervacio
21 and Rosa Martinez, and Defendants, Werner Co. and Home Depot, USA,
22 Inc., hereby submit this Joint Updated Case Management Statement.

23 As this court is aware, *In Re Werner Holding Co. (DE), Inc., et*
24 *al.*, Case No. 06-10578 (KJC) is still pending in the United States
25 Bankruptcy Court for the District of Delaware. The bankruptcy stay

1 applied therein was extended to Werner Co.'s retailers, including
2 Home Depot, U.S.A., Inc. in pending product liability actions.

3 An asset purchase agreement dated March 20, 2007 was approved
4 by the bankruptcy court in which significant assets were sold to
5 certain primary creditors of Werner Co. As a result, the action was
6 converted from a Chapter 11 reorganization to a Chapter 7
7 dissolution. Issues as to the impact of the asset sale on pending
8 product liability claims are still unresolved. In the interim, the
9 automatic stay entered in the Delaware Bankruptcy Court is still in
10 place as to the enjoined Plaintiff.

11 Attached to this status report is a copy of "Revised Second
12 Amended Liquidating Plan pursuant to Chapter 11 of the United States
13 Bankruptcy Code Filed by the Official Committee of Unsecured
14 Creditors. Counsel in this action have not had the opportunity to
15 discuss with the identified counsel for the unsecured creditors what
16 impact this proposed plan would have on this action. It appears
17 that there is a hearing regarding this plan currently scheduled for
18 October 25, 2007. The plan appears to call for the creation of a
19 "Liquidation Trust" and the appointment of a liquidation trustee."

20 Tort Claims appear to be addressed in paragraph E, page 31. If
21 the plan is approved it appears that the stay may be lifted to allow
22 the case to proceed to judgment or that the trustee may settle such
23 claims. However, it also notes that any such judgment entered in
24 violation of the stay is null and void. It is unclear as to whether
25 plaintiff in this action would meet the definition of a creditor who
26 could seek full or partial recovery from the trust, the procedural

1 mechanism to accomplish same, i.e. whether the stay will be lifted
2 to allow this action to proceed to judgment, if plaintiff has to
3 petition to allow the case to proceed and the stay lifted, whether
4 the funds will apply to/protect Home Depot, whether Home Depot has
5 equitable or contractual indemnity rights against Werner, whether
6 the litigation trust or trustee have to be substituted in as the
7 real party in interest, etc. Further the plan does not appear, at
8 first reading, to address the stay currently protecting certain of
9 Werner's vendors. It is hoped that if the plan is approved that
10 some guidance, orders and clarification will be forthcoming to
11 contingent creditors. It is possible that approval of the plan may
12 create a conflict of interest which will necessitate separate
13 counsel for Home Depot, where no such conflict existed prior to the
14 bankruptcy stay and during the period of attempted reorganization.

15 The parties respectfully request that this matter be put over
16 until January 2008 to allow time for some of these issues to be
17 sorted out.

18
19 DATED: October 19, 2007

THE BOCCARDO LAW FIRM, INC.

20 BY: _____/s/ _____
21 JOHN C. STEIN
22 Attorneys for Plaintiffs

23 DATED: October 19, 2007

SHAW, TERHAR & LAMONTAGANE

24 BY: _____/s/ _____
25 MICHAEL TERHAR
26 Attorneys for Defendants

ORDER

The District Court has reviewed the foregoing Joint Updated Case Management Statement.

GOOD CAUSE HAVING BEEN SHOWN, IT IS HEREBY ORDERED that the STAY is continued from October 29, 2007 to January 14, 2008 pending resolution of the bankruptcy of Defendant and that the Case Management Conference be continued to January 14, 2008, at 10 AM.

DATED: October 22, 2007

HON. JAMES WARE

UNITED STATES DISTRICT JUDGE